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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

SFUND RECORDS CTR  
2074108

IN THE MATTER OF:

Enterprise Sales Site  
Los Angeles, Los Angeles County,  
California

Joan and Arthur Fleischman Trust

Dan Fleischman, an individual,  
and

Enterprise Sales, Inc.

Respondents

UNILATERAL ADMINISTRATIVE  
ORDER FOR REMOVAL RESPONSE  
ACTIVITIES

U.S. EPA Region  
CERCLA  
Docket No. 9-2003-0019

Proceeding Under Section 106(a) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act, as  
amended, 42 U.S.C. §9606(a)

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 ("Branch Chief"), by a delegation dated November 16, 2001.

2. This Order pertains to property located at 901 East Third Street in the City of Los Angeles, Los Angeles County, California, the "Enterprise Sales Company Site" or the "Site." This Order requires the Respondents to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of California of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and is binding upon Respondents and Respondents' heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

5. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

6. Any Respondent and Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Paragraphs 23 and 24, Access to Property and Information.

## **III. DEFINITIONS**

7. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Days" shall mean consecutive calendar days unless expressly stated otherwise.

b. "Working days" shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields Revitalization Act of 2002, 42 U.S.C. § 9601 et seq.

d. "Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 9-2003-0019.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

g. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

h. "Response Action" shall be those specific work items Respondents are required to perform at the Site pursuant to this Order, as set forth in Section VI of this Order.

i. "Respondents" shall mean, both individually and collectively, the Joan and Arthur Fleischman Trust, Dan Fleischman, and Enterprise Sales, Inc.

j. "Section" shall mean a portion of this Order identified by a Roman numeral, unless otherwise stated.

k. "Site" shall mean the former Enterprise Sales facility located at 901 East Third Street in the City of Los Angeles, Los Angeles County, California.

l. "State" shall mean the state of California, and all of its political subdivisions, including the Department of Toxic Substances Control ("DTSC").

m. "United States" shall mean the United States of America.

#### **IV. FINDINGS OF FACT**

8. The Enterprise Sales Company Site is a former liquids and aerosols manufacturing facility. The Site is located on the northeast corner of Third Street and Garey Avenue in the City and County of Los Angeles, California. The street address for the facility has been identified as both 901 East Third Street and 290 South Garey Avenue. The coordinates of the site are North 34 02' 46.4" and West 118 14' 1.8" as taken from the Los Angeles 7.5 Minute USGS quadrangle.

a. The Site property is owned by the Joan and Arthur Fleischman Trust; Donald Fleischman is the Trustee.

b. The last operator at the facility, Enterprise Sales, Inc., discontinued operations in September 1999. The owner and sole shareholder of Enterprise Sales Inc., is Dan Fleischman. Dan Fleischman exercised decisionmaking authority over day to day operations at the facility including issues related to environmental regulatory compliance.

c. On July 17, 2002, the County of Los Angeles Fire Department ("CLAFD") conducted a Site inspection. During this inspection samples were taken substantiating the presence of corrosive hazardous wastes (hazardous waste number D002, 40 C.F.R. §261.22) and flammable hazardous wastes (hazardous waste number D001, 40 C.F.R §261.21).

d. On September 18, 2002, the CLAFD requested assistance from the EPA Emergency Response Section.

e. On September 11 and 12, 2002, EPA conducted a Preliminary Assessment ("PA"). EPA noted the presence of abandoned containerized hazardous substances and five open or leaking above ground storage tanks containing corrosive and flammable materials. These abandoned materials presented a release and threat of release of hazardous substances.

f. On October 28, 2002, the Joan and Arthur Fleischman Trust initiated a response action. All hazardous substances located at the Site were addressed with the exception of five aboveground storage tanks located outside and behind the facility. These tanks contain flammable gases and corrosives, and they continue to pose a threat of release of hazardous substances.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

9. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Enterprise Sales Company Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. Respondents Enterprise Sales, Inc., and Dan Fleischman were the "operators" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. Section 9607(a)(2).

f. Respondent the Joan and Arthur Fleischman Trust is the "owner" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. Section 9607(a)(1).

g. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

h. The conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors stated in the NCP at 40 C.F.R. § 300.415(b).

i. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

j. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

## **VI. ORDER**

10. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondents comply with the following provisions, including but not limited to all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

### **11. Notice of Intent to Comply**

Each Respondent shall notify EPA in writing within four (4) days after EPA signs this Order of Respondent's irrevocable intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

### **12. Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

Respondents shall retain a contractor qualified to perform the removal action. Respondents shall notify EPA of the name and qualifications of such contractor within two (2) business days after the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform the removal action under this Order at least one (1) day prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within one (1) business day following EPA's disapproval.

13. Within two (2) days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within one (1) business day following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

14. The EPA has designated Harry Allen of the Region 9 Emergency Response Section as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at:

Harry Allen, OSC  
Emergency Response Section, SFD-9-2  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
allen.harryl@epa.gov

15. Work to Be Performed

Respondent shall perform, at a minimum, all actions necessary to implement the Work Plan. The actions to be implemented generally include, but are not limited to, the following:

a. The removal of flammable gases from two horizontal, steel, aboveground tanks (Tanks A-13 & A-14). These tanks are each approximately 1,000 gallons in volume and are both labeled "flammable gas." These tanks must be decommissioned in place or disposed off site.

b. The removal of residual contamination and the decommissioning or off-site disposal of an insulated, vertical, fiberglass aboveground tank (Tank A-11). This tank is approximately 5,000 gallons in volume, and is labeled "corrosive."

c. The identification and characterization of a horizontal, steel, aboveground tank (Tank A-15) on stilts. The tank is approximately 2,000 gallons in volume and is not labeled. Its contents are unknown. The Respondents must identify the contents of the tank. Any residual contamination must be removed and the tank must be decommissioned or disposed off site.

d. The removal or decommissioning of a vertical, steel, aboveground tank (Tank A-12) adjacent to Tank A-11. This tank is approximately 1,000 gallons in volume and is labeled "corrosive." This tank must be decommissioned or disposed off site.

16. Work Plan and Implementation

Within three (3) days after the effective date of this Order, the Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order.

17. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within two (2) days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved Work Plan.

Respondents shall not commence or undertake any removal actions at the Site without prior EPA approval.

18. Health and Safety Plan

Within three (3) days after the effective date of this Order, the Respondents shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of the public health and safety during performance of on-site work under this Order. The Health and Safety Plan must be prepared in accordance with "EPA's Superfund Standard Operating Safety Guide," dated June 1992, and comply with all current Occupational Safety and Health Administration regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents shall incorporate all changes to the Health and Safety Plan recommended by EPA and implement the Health and Safety Plan throughout the performance of the removal action.

19. Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow the following documents as appropriate as guidance for QA/QC and sampling: "EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5)"; "Preparation of a U.S. EPA Region 9 Field Sample Plan for EPA-Lead Superfund Projects (Document Control No.: 9QA-05-93)"; and "Guidance for the Data Quality Objectives Process (EPA QA/G-4)."

20. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

21. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing actions under this Order. Respondents shall notify EPA not less than two (2) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

22. Final Report

Within ten (10) days after completion of all removal actions required under this Order, the Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal

action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**23. Access to Property and Information**

Respondents shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, and representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondents' contractors or on the Respondents' behalf during implementation of this Order.

24. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within three (3) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondents for all costs and attorney's fees incurred by the United States in obtaining access for Respondents.

**25. Record Retention, Documentation, Availability of Information**

Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for four years following completion of the removal actions required by this Order. At the end of this four year period and 30 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the four year period at the written request of EPA.

26. Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.



27. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Procedures for planning and implementing off-site response actions," promulgated at 40 C.F.R. Part 300.440.

28. Compliance With Other Laws

Respondents shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless the Respondents obtain a variance or exemption from the appropriate governmental authority.

29. Emergency Response and Notification of Releases

If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action. The Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC of the incident or site conditions. If Respondents fail to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

30. In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify EPA Region 9 Emergency Response Center at (800) 300-2193 or the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

**VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR**

31. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 C.F.R. 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

32. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA, two (2) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

## **VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

33. Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

## **IX. REIMBURSEMENT OF OVERSIGHT COSTS**

34. Respondents shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order, unless otherwise exempted from this requirement by federal law. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Attn: David Wood  
Region 9, Attn.: Superfund Accounting  
P.O. Box 360863M  
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the Enterprise Sales Site by name and make reference to this Order, including the EPA docket number stated above. Respondents shall send notification of any amount paid, including a photocopy of the check, simultaneously to the EPA OSC.

35. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

## **X. RESERVATION OF RIGHTS**

36. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant

to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

## **XI. OTHER CLAIMS**

37. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

38. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

39. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

## **XII. MODIFICATIONS**

40. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than within three (3) days of discovery of the unanticipated or changed circumstances.

41. EPA may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraph 40. Where consistent with Section 106(a) of CERCLA, EPA may direct, as an amendment to this Order, that Respondents perform these tasks in addition to those required herein. Respondents shall implement the additional tasks that EPA identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by EPA in any modifications to this Order.

42. Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing soon thereafter; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction.

43. If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

44. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

### **XIII. DELAY IN PERFORMANCE**

45. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondents under the terms and conditions of this Order.

46. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondents first knew or should have known that a delay might occur. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, the Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

47. If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondents' obligations under this Order.

### **XIV. NOTICE OF COMPLETION**

48. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

## **XV. ACCESS TO ADMINISTRATIVE RECORD**

49. The Administrative Record supporting these removal actions is available for review at EPA's Superfund Records Center located at 75 Hawthorne Street, San Francisco, California, and may be contacted at (415) 536-2000.

## **XVI. OPPORTUNITY TO CONFER**

50. Within four (4) days after EPA signs this Order, Respondents may request a conference with EPA. Any such conference shall be held within three (3) days after the request unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

51. If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments in writing to EPA within three (3) days after the Effective Date of this Order. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Thanne Cox, Assistant Regional Counsel, at the following address:

Thanne Cox  
US EPA  
Office of Regional Counsel (ORC-3)  
75 Hawthorne Street  
San Francisco, California 94105  
415-972-3908  
[cox.elizabeth@epa.gov](mailto:cox.elizabeth@epa.gov)

## **XVII. INSURANCE**

52. Respondents shall submit to EPA a certification that Respondents or their contractor and subcontractor have adequate insurance coverage or other ability, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondents shall ensure that the United States is named as an additional insured on any such insurance policies.

### **XVIII. SEVERABILITY**

53. If a court issues an order that invalidates any provision of this Order or finds that Respondents has sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

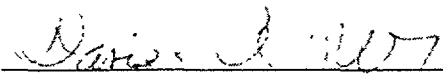
### **XIX. EFFECTIVE DATE**

54. This Order shall be effective three (3) days after the Order is signed by the Response, Planning and Assessment Branch Chief, unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by EPA.

Unilateral Administrative Order 9-2003-0019

IT IS SO ORDERED:

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

By:   
Date: 5 September 2003

Daniel A. Meer  
Branch Chief, Response, Planning and Assessment Branch  
EPA, Region 9

EFFECTIVE DATE: \_\_\_\_\_

EPA Region 9 Contacts:

Harry Allen, Federal On-Scene Coordinator  
Emergency Response Section, SFD-9-2  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3063

Thanne Cox, Assistant Regional Counsel  
Office of Regional Counsel, RC  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3908

John Jaros, Civil Investigator  
Emergency Response Section, SFD-9-2  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

**APPENDIX A**  
Unilateral Administrative Order 9-2003-0019  
Enterprise Sales Site

Joan and Arthur Fleischman Trust  
c/o Don Fleischman, Trustee  
2767 Butler Creek Drive  
Pasadena, CA 91107

Dan Fleischman  
P.O. Box 183  
2798 Foothill, Blvd  
Montrose, CA 91214

Enterprise Sales, Inc.  
c/o Dan Fleischman  
P.O. Box 183  
2798 Foothill Blvd  
Montrose, CA 91214

Dan Fleischman  
5021 Castle Road  
La Canada, CA 91011